UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

October 4, 2004 at 9:00 a.m.

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1. 04-27802-A-7 YOLANDA TORRES — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS 9-9-04 [9]

Tentative Ruling: The petition will be dismissed. The debtor failed to appear at the first meeting of creditors on September 7 as ordered by the court and as required by 11 U.S.C. § 343.

2. 00-21806-A-7 JEFFREY REED — HEARING - MOTION TO REOPEN CASE TO DETERMINE DISCHARGEABILITY OF DEBT 8-23-04 [10]
WLJ #1

Tentative Ruling: The motion will be granted in part.

The debtor filed a petition for relief under chapter 7 on February 17, 2000. Kenny W. Flinn was appointed as the chapter 7 trustee. The case was closed on June 1, 2000.

The debtor now moves to reopen the case in order to determine the amount, legality, and dischargeability of an obligation allegedly owed to the California State Board of Equalization for $438,274 in sales taxes. Such tax liability is apparently based on transactions that incurred from June 26, 1985 through March 31, 1993. According to the debtor, the Board of Equalization asserts that no part of its obligation was discharged because it imposed fraud penalties as a result of an audit.

The debtor denies engaging in fraudulent conduct. In addition, the debtor argues that the obligation was discharged because the taxes are more than three years old.

The motion to reopen the case will be granted. The Bankruptcy Code permits the court to reopen a case to administer assets, to accord relief to the debtor, or for other cause. 11 U.S.C. § 350(b). The bankruptcy court has broad discretion in the reopening of a case. In re Shondel, 950 F.2d 1301, 1304 (7th Cir. 1991). In addition, the pertinent procedural rule is also broadly worded, providing that "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Fed. R. Bankr. P. 5010.

The court may grant an order to reopen a case on an ex parte basis. Local Bankruptcy Rule 5010-1. See also Menk v. LaPaglia (In re Menk), 241 B.R. 896 (B.A.P. 9th Cir. 1999). Reopening of the case does not grant any substantive relief to the movant.

With respect to the request that the court now determine the amount, legality, and dischargeability of the debtor's tax obligation, the motion is denied without prejudice. Pursuant to Fed. R. Bankr. P. 7001(6), a proceeding to determine the dischargeability of a debt must be in the form of an adversary proceeding.

This aspect of the motion is also denied on grounds of improper service. First, the proof of service refers to, amongst other things, a complaint to determine dischargeability. Here, the record shows that no such complaint exists.

Second, Fed. R. Bankr. P. 7004(b)(6) provides that a moving party serving a state governmental entity or subdivision thereof must serve the person or office prescribed to be served under state law. The proof of service identifies no such person.

Local Bankruptcy Rule 2002-1(b) also directs the moving party to a roster of governmental agencies and the specific addresses to which bankruptcy proceedings should be directed. Here, the debtor's proof of service fails to direct the motion to the Account Analysis & Control Section of the State Board of Equalization, as shown on the roster. Moreover, the debtor used an incorrect zip code.

Accordingly, the portion of the motion requesting substantive relief will be denied.

3. 04-26306-A-7 MICHELLE HARMON — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OR CASE OR IMPOSITION OF SANCTIONS 9-14-04 [10]

Tentative Ruling: The petition will remain pending on the condition stated below.

The debtor filed an amended Schedule F on September 13. The amendment was not accompanied by the mandatory $26 filing fee. See 28 U.S.C. § 1930(b). The debtor has through and including October 8 to tender the $26 fee to the clerk. If not tendered, the petition will be dismissed without further notice or hearing.

4. 04-26208-A-7 ELZIE HARRIS — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 9-16-04 [14]
JMG #1
OPTION ONE MORTGAGE CORP., VS.

Final Ruling: The movant has voluntarily dismissed the motion.

5. 05-28710-A-7 KEVIN HENDRICKS — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 9-20-04 [5]
SW #1
WFS FINANCIAL, INC., VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need

to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

6. 04-29011-A-7 LISA BARRETT — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 9-20-04 [7]
SW #1
WELLS FARGO FINANCIAL ACCEPTANCE, VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

7. 04-25212-A-7 CYNTHIA YOUR — HEARING - MOTION OF THE UNITED STATES TRUSTEE FOR EXTENSION OF TIME FOR FILING A COMPLAINT OBJECTING TO DEBTOR'S DISCHARGE OR FOR FILING A MOTION TO DISMISS 8-23-04 [12]
UST #1

Tentative Ruling: The United States Trustee requests an order extending the last date to either file a motion to dismiss pursuant to 11 U.S.C. § 707(b) or object to the debtor's discharge. The United States Trustee filed this motion to extend time before the original time to file an objection to discharge expired as required by Fed.R.Bankr.P. 4004(b).

The debtor filed a petition for relief under chapter 7 on May 20, 2004. Susan K. Smith was appointed as the chapter 7 trustee. The chapter 7 trustee referred the case to the United States Trustee to be reviewed as having been filed in substantial abuse of the Bankruptcy Code. After examining various documents produced by the debtor regarding her income and expenses, the United States Trustee believes that further review is needed. The United States Trustee intends to request additional documentation, such as copies of the debtor's check registers and tax returns.

The debtor opposes the motion. She argues that she has not engaged in abuse, that her statements are true and correct, and that there is no additional information she can provide that would change her situation.

Although the court sympathizes with the debtor's family and financial difficulties, the motion will be granted to allow the United States Trustee to obtain more detailed information from the debtor. The last day to file a motion to dismiss or object to the debtor's discharge will be extended to October 25, 2004.

The court notes that the notice of hearing incorrectly shows that the hearing is held on the 6th floor.

8. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #2
VS. J. WARD — 9-20-04 [175]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

9. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #3
VS. INDEPENDENT APPRAISAL, INC. — 9-20-04 [179]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

10. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #4
VS. WEST PUBLISHING CORP. — 9-20-04 [183]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

11. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #5
VS. HERBERT P. SEARS CO., INC. — 9-20-04 [187]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

12. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #6
VS. SAINTE LIMITED — 9-17-04 [146]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

13. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #7
VS. SACTO. DEPO. RPTRS./AM. RECOVERY — 9-17-04 [142]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

14. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #8
VS. NORTHERN CALIFORNIA COLLECTION — 9-17-04 [134]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

15. 03-21113-A-7 CARLOS/NORMA ALCALA — HEARING - MOTION TO AVOID LIEN
CRR #9
VS. M. SNOW — 9-17-04 [138]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

16. 03-21113-A-7 CARLOS/NORMA ALCALA. HEARING - MOTION TO
CRR #10 AVOID LIEN
VS. CRISTAN WEBER 9-17-04 [150]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

17. 03-21113-A-7 CARLOS/NORMA ALCALA HEARING - MOTION TO
CRR #11 AVOID LIEN
VS. CHRISTINA BALLESTEROS 9-17-04 [158]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

18. 03-21113-A-7 CARLOS/NORMA ALCALA HEARING - MOTION TO
VS. CRR #12 AVOID LIEN
BARRISTERS REPORTING SERVICE 9-17-04 [162]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

19. 03-21113-A-7 CARLOS/NORMA ALCALA HEARING - MOTION TO
CRR #13 AVOID LIEN
VS. NO. CAL. COLL. SERV., INC. 9-17-04 [154]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

20. 03-21113-A-7 CARLOS/NORMA ALCALA
CRR #14
VS. U-HAUL COMPANY OF SACRAMENTO

HEARING - MOTION TO AVOID LIEN
9-17-04 [166]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

21. 03-21113-A-7 CARLOS/NORMA ALCALA
CRR #15
VS. JOHN C. MORGAN AND ALEJANDRO PADILLA

HEARING - MOTION TO AVOID LIEN
9-17-04 [170]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

22. 03-33624-A-7 CARL/JENNIFER LANE
JRR #1

HEARING - DEBTORS' MOTION FOR ORDER COMPELLING TRUSTEE TO ABANDON REAL PROPERTY ETC
8-24-04 [15]

Tentative Ruling: The debtors filed a petition for relief under chapter 7 on December 19, 2003. Michael F. Burkart was appointed as the chapter 7 trustee.

The debtors seek an order compelling the chapter 7 trustee to abandon real property of the estate located at 3981 Frog Hollow Drive, in Placerville, California. The debtors argue that the property is burdensome to the estate.

The debtors scheduled the fair market value of the real property at $229,000, with a secured claim of $116,000, in their Schedule A. The debtors claimed a homestead exemption of $125,000 in their Schedule C.

On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b).

The motion is denied without prejudice. The debtors have not presented any evidence to prove the value of the property or the amount of the liens encumbering it. Telling the court what is in the schedules is not enough. The motion must be supported by evidence demonstrating the value of the property on the date the petition was filed as well as its current value. The later is necessary given that the estate is entitled to post-petition appreciation. See Hyman v. Plotkin (In re Hyman), 967 F.2d 1316, 1321 (9th Cir. 1992); In re Alsberg, 68 F.3d 312, 315 (9th Cir. 1995). In short, this motion should be

supported by a declaration from the debtors, or someone qualified to give an opinion regarding the property's value.

Accordingly, the motion is denied without prejudice.

23. 02-31925-A-7 CAPITOL MODULAR, INC. HEARING - MOTION TO
WGC #1 TO APPROVE COMPROMISE OF
ADVERSARY NO. 03-2407
WITH DOUGLAS ERICKSON
9-8-04 [113]

Final Ruling: The motion will be dismissed without prejudice. The notice of the hearing gives inaccurate and insufficient notice regarding opposition. Because less than 28 days' notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) is applicable. Consequently, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. Rather, opposition, if any, is to be presented at the hearing. However, the notice of hearing provides that opposition must be written, and it must be filed and served by September 20, 2004. Therefore, potential respondents were given inaccurate instructions regarding opposition.

24. 03-29726-A-7 GABRIELLE PAPPA HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
WASHINGTON MUTUAL BANK, VS. 9-1-04 [24]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

On September 2, 2003, the debtor filed a petition under chapter 7. Stephen M. Reynolds was appointed as the chapter 7 trustee.

On January 22, 2002, the debtor and her spouse executed a deed of trust in favor of the movant, Washington Mutual Bank, FA, to secure an indebtedness of $153,600. The deed of trust encumbers property located at 1625 Dailey Drive, in Dixon, California.

The debtor has defaulted under the note, owing all payments due beginning May 1, 2004. The total unpaid principal on the note is $138,837.35 plus interest, late charges, and attorney's and foreclosure fees. The movant estimates the total unpaid balance to be approximately $142,614.75.

The property has been valued at $300,000 in the debtor's Schedules A and D. The motion does not contest this value. At this value, the debtors have approximately $157,385.25 in equity.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(1) and (2). The movant argues that the existing equity in the property does not adequately protect the movant's interest and that there is no equity in this asset for the chapter 7 trustee to administer.

Relief from the stay is not proper in the instant case. Here, the movant is adequately protected by the substantial equity the debtors have in the

property. Moreover, the movant holds the senior lien. Accordingly, the motion is denied.

The parties are to bear their own fees and costs.

25. 04-28726-A-7 TODD/ROBIN FORBES — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
WGM #1 — 9-20-04 [6]
LONG BEACH MORTGAGE CO., VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

26. 04-26230-A-7 DAVID/JULIENNE THEAKSTON — HEARING - MOTION FOR REDEMPTION
MEH #1 — 8-23-04 [8]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

On June 16, 2004, the debtors filed a voluntary petition for relief under chapter 7. The debtors move to redeem personal property pursuant to 11 U.S.C. § 722.

The debtor seeks to redeem a 2002 Ford Escape with approximately 36,100 miles in fair condition. The debtor's have claimed the vehicle exempt. The Kelley Blue Book report values the car at $11,930. The debtor listed Bank of America as holding a secured claim in the amount of $23,344.99 in Schedule D. No objections to this motion have been filed.

Pursuant to 11 U.S.C. § 722 the debtor is allowed to redeem tangible personal property intended for personal use from a lien securing a dischargeable consumer debt if the property was exempted under 11 U.S.C. § 522. The value of this secured claim is $11,930, evidenced by the value of the vehicle.

The motion will be granted. The sum of $11,930 shall be tendered within 15 days of entry of the order.

27. 04-26944-A-7 ERROL/BRENDA HOLMES — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
KCC #1 — 9-7-04 [13]
MTG. ELECTRONIC REGIS. SYSTEMS, INC., VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least

14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

On July 7, 2004, the debtors filed a petition for relief under chapter 7. Prem N. Dhawan was appointed as the chapter 7 trustee.

The debtors executed a second deed of trust in favor of the movant, Mortgage Electronic Systems, Inc., to secure indebtedness of $70,000. The deed of trust encumbers property located at 607 Fruitvale Road, in Vacaville, California.

The debtors have defaulted under the note, owing all payments due beginning May 15, 2004. The total unpaid principal on the note is $70,000 plus interest, late charges, and attorney's fees. The movant estimates the total unpaid balance to be approximately $74,807.73.

More than $337,000 is secured by the senior deed of trust.

Per the debtors' schedules, the property has a value of $440,000. This value of the property indicates that the debtors would have approximately $28,000 in equity.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(1) and (2). The movant alleges that cause exists to grant the motion because its interest in the property is not adequately protected and there is no equity in the subject property. The court agrees. After expenses of sale, there is de minimis equity. Furthermore, the existence of the significant senior lien indicates that the movant's equity cushion is de minimis as well.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the

debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

28. 04-28845-A-7 RICHARD/JANET LINTON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
SW #1
GMAC, VS.
9-16-04 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

29. 04-28558-A-7 CATALINA/ELADIO MONTOYA — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OR CASE OR IMPOSITION OF SANCTIONS
9-10-04 [15]

Final Ruling: The court orders the hearing continued to December 6, 2004 at 9:00 a.m. in order to give the United States Trustee and the trustee time to complete the investigation described in the United States Trustee's response. The court also will order the extension of the deadline to seek dismissal pursuant to 11 U.S.C. § 707(b) and to file complaints pursuant to 11 U.S.C. §§ 523(a) and 727(a) through and including January 22, 2005.

30. 04-28960-A-7 BRUCE PRESTON — HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OR CASE OR IMPOSITION OF SANCTIONS
9-9-04 [5]

Final Ruling: The petition shall remain pending and the order to show cause will be discharged. The master address list has now been filed together with the filing fee required by 28 U.S.C. § 1930(b).

31. 00-32862-A-7 LASER TAG PROFESSIONALS — FINAL CONT. HEARING - REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES
PJR #1
7-1-04 [148]

Tentative Ruling: The motion will be granted to the extent described below.

On January 5, 2000, the court approved the application of the former debtor in

possession to employ the applicant as its attorney. The debtor in possession was displaced first by a chapter 11 trustee then by a chapter 7 trustee. Gerald Muto served in both trustee capacities.

On July 1, 2002, the court approved the applicant's first interim application. He was awarded $7,741.51 in fees and costs but the trustee was not ordered to pay these fees. The court did not permit the fees to paid from a retainer given to the applicant by the debtor because it was paid after the filing of the petition and was therefore property of the estate. The court also did not require payment of the fees from property of the estate because the fees were all earned while the case was proceeding in chapter 11. Given the conversion to chapter 7, these fees could only be paid after all chapter 7 administrative expenses. See 11 U.S.C. § 726(b). At the time, it was unclear whether there would be sufficient assets to pay all chapter 7 administrative expenses as well as all chapter 11 expenses.

On July 11, 2002 the court approved the applicant's second interim fee application and approved an additional $1,890. The court also finally awarded the applicant a total of $9,631.50.

On August 6, 2002 the court approved the payment of $3,500 of the approved fees. The payment was to be drawn from the $7,500 retainer. The balance of the retainer was ordered turned over to the trustee.

This motion seeks to compel the trustee to pay the remaining balance, $6,131.50. No objection has been lodged other than a request that the payment be ordered at the same time the court considers the trustee's application, as well as his counsel's application, for final compensation. Those applications are now being considered (see docket control nos. HSM-5 and HSM-6).

The court orders payment of the previously approved fees after all administrative expenses incurred by the chapter 7 estate are paid. Assuming assets remain after payment of the chapter 7 administrative expenses, if the remainder in the estate is not sufficient to pay all chapter 11 expenses, the fees will be paid as required by section 726(b).

32. 00-32862-A-7 LASER TAG PROFESSIONALS
HSM #5

CONT. HEARING - MOTION FOR FIRST AND FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR COUNSEL FOR THE TRUSTEE ($44,890.00 FEES; $2,311.30 EXPENSES)
7-26-04 [153]

Tentative Ruling: The motion will be granted in part.

The motion seeks approval of $44,890 in attorneys' fees and $2,311.30 in costs incurred in connection with the representation of the chapter 11 and chapter 7 trustee in this court. Of these amounts, $5,756.40 was for services rendered and costs incurred during the chapter 11 case. The remainder, a total of $41,444.90, was incurred after the date of conversion to chapter 7, February 7, 2001. The motion is accompanied by detailed, contemporaneous time records as well as a narrative analyzing the fees by project category.

The court concludes that the rates charged are reasonable and compare favorably with the rates charged for business bankruptcy legal work in this locale.

The work undertaken was necessary. However, as noted in the objection, not all of it benefitted the estate. After conversion, counsel spent 93 hours on preference actions for which counsel billed $18,042. Those actions resulted in recoveries totaling $24,500. The amount billed for this work is 74% of the recovery. The court will reduce these fees and costs to 40% of the amount of recovery, or $9,800. Thus, of the $18,042 billed for this work, the court will disallow $8,242.

Therefore, the court awards $5,756.40 for the work performed and costs incurred during the chapter 11 case. The court awards $33,202.90 for the work performed and costs incurred during the chapter 7 case.

The chapter 7 fees and costs shall be paid with all other chapter 7 administrative expenses. If there are insufficient funds to pay all such expenses they shall be paid consistent with section 726(b). Once the chapter 7 administrative expenses are paid in full, the chapter 11 administrative expenses shall be paid. If there are insufficient funds to pay all such expenses they shall be paid consistent with section 726(b).

33. 00-32862-A-7 LASER TAG PROFESSIONALS
HSM #6

CONT. HEARING - MOTION FOR FIRST AND FINAL ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE TRUSTEE ($21,446.25 FEES; $20.26 EXP.)
7-28-04 [159]

Tentative Ruling: The motion will be denied without prejudice.

The motion seeks compensation for the trustee. The trustee served as both a chapter 11 and chapter 7 trustee.

In his capacity as a chapter 11 trustee, the trustee asks the court to approve fees of $21,446.25 and expenses of $20.26.

In his capacity as a chapter 7 trustee, the trustee asks the court to approve fees of $14,605 and expenses of $2,623.89. Of these costs, $1,868 was paid as compensation by the trustee to Bob Dal Parto for "clerical and ministerial" services and $723.60 represents expenses incurred by Mr. Dal Parto traveling in connection with the case.

Detailed time records are appended to the motion explaining what work the trustee undertook on behalf of the estate. While the court finds no fault with the work done or the amount of time billed, the trustee's compensation, whether for chapter 11 or chapter 7 work, is capped by 11 U.S.C. § 326. Section 326(a) provides for the maximum compensation that can be awarded to a trustee. This cap on compensation is based on the amounts disbursed by the trustee but not including disbursements to the debtor.

The court cannot determine whether the fees requested are within the cap imposed by section 326(a) because the motion includes no evidence of the disbursements made by the trustee.

Therefore, the court is not in a position to determine the trustee's compensation.

34. 01-20962-A-7 MICHAEL ANGLIN — HEARING - MOTION FOR
01-2114 RIF #9 — ATTORNEYS' FEES AND COSTS
MICHAEL ANGLIN, VS. — ($362,363.68)
UNION LEASING CORP. — 8-24-04 [280]

Tentative Ruling: The debtor, Michael Bruce Anglin, filed a voluntary petition for relief under chapter 11 on January 30, 2001. The case was converted to one under chapter 7, and Gerald Ainsworth was appointed as the chapter 7 trustee. On March 15, 2001, while the chapter 11 case was still pending, the debtor filed an adversary case against defendants Leonard L. Ciufo and Union Leasing Corporation. In addition to the debtor, Floyd Anglin, Grace Anglin, and the Coconate Estate, of which Grace Anglin is the acting trustee, were named as plaintiffs.

The plaintiffs' second amended complaint states seven different causes of action, all seeking damages based on alleged conduct taken by the defendants with respect to certain equipment and vehicles allegedly owned by one or more of the plaintiffs. The causes of action include: conversion, fraud (which appears in two separate counts), misrepresentation, breach of contract, declaratory and injunctive relief, and a request for an accounting.

On October 21, 2002, the defendants moved for summary judgment. By order filed and entered January 10, 2003, the defendants were granted summary judgment as to the count for breach of contract. Thereafter, the remaining counts of the plaintiffs' complaint were left to be resolved at trial. On August 6, 2004, the court entered a judgment in favor of the defendants with respect to the remaining counts brought by the plaintiffs in the second amended adversary complaint.

The defendants now seek to recover attorney's fees and costs, in the amount of $362,363.68, incurred while defending themselves in the instant case. The defendants argue that recovery of attorney's fees and costs should be allowed under Haw. Rev. Stat. § 607-14 (Hawaii's assumpsit statute), Fed. R. Bankr. P. 9011, and the court's inherent authority to sanction bad faith conduct. The court will analyze each basis independently.

First, the defendants contend that they are entitled to recover attorney's fees and costs under Hawaii's assumpsit statute. Haw. Rev. Stat. § 607-14 provides, in relevant part, "in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, to be paid by the losing party . . . a fee that the court determines to be reasonable." The statute also states that the amount of attorney's fees awarded shall not exceed 25% of the judgment. Haw. Rev. Stat. § 607-14.

The defendants argue that on the surface the complaint contains a breach of contract count combined with other counts. However, the entire case focused on contractual issues. Thus, according to the defendants, all of the counts in the second amended adversary complaint are actions in the nature of assumpsit pursuant to Haw. Rev. Stat. § 607-17.

The court disagrees. The defendants have not shown that any of the counts alleged by the plaintiffs were brought under the assumpsit statute. Moreover, only the breach of contract count could possibly be construed as an action in the nature of assumpsit. Aside from the breach of contract count, all of the counts alleged in the plaintiffs' second amended complaint are based in tort law. Therefore, only attorney's fees and costs related to defending the breach

of contract count could potentially be recoverable under the Hawaii assumpsit statute.

However, because the court concludes that the defendants have not proven that any of the counts alleged in the plaintiffs' second amended adversary complaint are in the nature of assumpsit, and because, if it is assumed that some counts are in the nature of assumpsit, all fees would have been incurred even if the "assumpsit" counts had not been included in the complaint, it concludes that no fees can be awarded pursuant to the assumpsit statute.

Second, the defendants assert that attorney's fees and costs are recoverable pursuant to Fed. R. Bankr. P. 9011. Fed. R. Bankr. P. 9011(c)(1)(A) allows a motion for sanctions to be made, so long as within 21 days after service of the motion, the challenged paper or contention is not withdrawn or corrected by the challenged party.

Here, the defendants assert that fees and costs should be recoverable as a sanction against the plaintiffs. The defendants allege that the plaintiffs' pursued claims for an improper purpose and pursued claims they knew or should have known to have been without merit in violation of Fed. R. Bankr. P. 9011(b)(1) and (3).

The court finds that the defendants cannot utilize Fed. R. Bankr. P. 9011 to recover attorney's fees and costs in the instant case. Notwithstanding the fact that the plaintiffs may have acted in violation of Fed. R. Bankr. P. 9011(b)(1) and (3), the defendants have not provided evidence to show that they acted in accordance with Rule 9011(c)(1)(A). Because the defendants have not shown that they provided the defendants with the 21-day safe harbor to withdraw or correct the challenged paper or course of conduct, the motion for sanctions under rule 9011 must be denied.

Finally, the defendants argue that they are entitled to attorney's fees and costs under the court's inherent authority to sanction bad faith and contumacious conduct. Article III courts have an inherent authority to sanction willful or bad faith conduct. The bankruptcy courts also possess such authority. Chambers v. NASCO, 501 U.S. 32, 42-47 (1991), Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284 (9th Cir. 1996). However, apart from Rule 9011, the bankruptcy court's authority to punish bad behavior is limited. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1197 (9th Cir. 2003). The bankruptcy court is not authorized to impose significant damages as a sanction.

However, the court may award compensatory sanctions pursuant to its inherent power. And such a sanction can consist of an award of attorneys' fees. Id. at 1197-98. The court concludes that there is not cause to do so. As pointed out by the chapter 7 trustee, the adversary proceeding was tried on a limited record due to the court's exclusion of testimony. That exclusion was the result of the plaintiffs' failure to comply with Local Bankruptcy Rule 9017-1 and their failure to subpoena witnesses. Incompetence, not maliciousness, is to blame for the plaintiffs' ill fortune at trial.

Accordingly, the motion will be denied.

35. 01-20962-A-7 MICHAEL ANGLIN
01-2114 RIF #9
GERALD AINSWORTH, VS.

LEONARD CIUFO, ET AL.

HEARING - MOTION FOR ORDER RELIEVING COUNSEL FOR PLAINTIFFS OR, ALTERNATIVELY ENTRY OF ORDER NUNC PRO TUNC TO AUGUST 18, 2003
9-23-04 [288] O.S.T.

Tentative Ruling: The motion will be granted in part.

The movant, Robert V. Cohune, moves for an order relieving him as counsel for plaintiffs Floyd Anglin, Grace Anglin, and the Coconate Estate ("plaintiffs") on the basis that such motion was made and heard by the court on August 18, 2003. In the alternative, the movant seeks approval of the motion as a newly noticed motion. The movant contends that he has had no contact with any of the plaintiffs since August 2003.

The movant does not request to be relieved as counsel as to plaintiff Gerald Ainsworth, trustee for the Bruce Anglin chapter 7 estate.

The movant asserts that he was relieved as counsel for the plaintiffs during the hearing on August 18, 2003. However, review of the court transcript reveals that the earlier motion to be relieved as counsel was voluntarily dismissed. Therefore, the court will not grant the motion *nunc pro tunc* effective August 18, 2003.

In his new motion to withdraw, the movant argues that withdrawal should be approved pursuant to Cal. Civ. Proc. Code § 284(2) and Rules 3-700(B)(1) and (2), and Rules 3-700(C)(1)(a), (d), and (f) of the California Rules of Professional Conduct. The movant contends that Floyd Anglin did not comply with an agreement regarding the payment of litigation expenses. The movant also states that Grace Anglin took no part in the litigation.

The motion will be granted and the movant will be relieved as counsel for the plaintiffs. Cal. Civ. Proc. Code § 284(2) allows for a change or substitution of an attorney upon court approval. Pursuant to Rules 3-700(C)(1)(d) and (f) of the California Rules of Professional Conduct, permissive withdrawal is allowed if a client causes unreasonable difficulty for counsel to effectively represent the client or if the client breaches an agreement with counsel regarding the payment of expenses or fees.

Here, withdrawal will be approved effective upon entry of an order as against Floyd and Grace Anglin. Floyd and Grace Anglin have breached their obligation to pay the movant litigation expenses as agreed. In addition, these plaintiffs' conduct in failing to communicate with the movant has rendered representation ineffective.

Rule 3-700(A)(2) of the California Rules of Professional Conduct provides that counsel may not withdraw from representation without taking reasonable steps to avoid prejudice to the client. Such reasonable steps include providing sufficient notice and time for the client to find other representation.

Here, the movant has made repeated attempts to contact with no response Floyd and Grace Anglin. The court finds that the movant has made a sufficient effort to notify these plaintiffs of his withdrawal as their attorney and the need to seek new counsel.

Minimal prejudice will result. The trial has been concluded and a final

judgment has been entered.

36. 04-24067-A-7 JEFFREY/WENDY MORGAN
UST #1

HEARING - UNITED STATES TRUSTEE'S MOTION FOR EXTENSION OF TIME FOR FILING A COMPLAINT OBJECTING TO DEBTORS' DISCHARGE OR FOR FILING A MOTION TO DISMISS
9-3-04 [24]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the creditors, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The United States Trustee requests an order extending the last date to either file a motion to dismiss pursuant to 11 U.S.C. § 707(b) or object to the debtors' discharge. The United States Trustee filed this motion to extend time before the original time to file an objection to discharge expired as required by Fed.R.Bankr.P. 4004(b).

The debtors filed a chapter 13 petition on April 20, 2004. The debtors voluntarily converted their case to one under chapter 7 on June 1, 2004. Kenneth Sanders was appointed as the chapter 7 trustee.

Upon reviewing the debtors' schedules and the testimony from the section 341 meeting, the United States Trustee has determined there may be a potential abuse if this case is permitted to proceed under chapter 13. Based on the original schedules filed in the chapter 13 case, it appears that the debtors had sufficient net disposable income to fund a chapter 13 plan despite their conversion to a chapter 7 petition. Furthermore, the two post-conversion schedules do not indicate that the debtors' income or expenses have changed.

The United States Trustee requests an additional 62 days to obtain additional information and documentation in order to determine the debtors' correct income and expenses and what further action is needed. If such documentation shows that this case is an asset case, then a further determination must be made as to whether the creditors would benefit more from a distribution through the current chapter 7 case or through a chapter 13 plan.

The motion will be granted. The last day to file a motion to dismiss or object to the debtor's discharge will be extended to November 8, 2004.

37. 04-24067-A-7 JEFFREY/WENDY MORGAN
RTD #1

HEARING - MOTION TO EXTEND THE TIME TO FILE A COMPLAINT TO OBJECT TO DISCHARGE OF THE DEBTORS AND TO FILE A COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
9-7-04 [28]

Final Ruling: The parties have continued the hearing to October 25, 2004 at 9:00 a.m.

38. 04-27468-A-7 STEVEN BEYMER
KRR #1

HEARING - MOTION TO ABANDON PROPERTY OF THE ESTATE, SOLE PROPRIETORSHIP BUSINESS KNOWN AS BEYMER & SON WELL & DRILLING
9-8-04 [14]

Final Ruling: The motion will be dismissed without prejudice. The notice of the hearing gives inaccurate and insufficient notice regarding opposition. Because less than 28 days' notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) is applicable. Consequently, the trustee, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. Rather, opposition, if any, is to be presented at the hearing. However, the notice of hearing states that potential respondents must file written opposition at least 14 calendar days prior to the hearing. Therefore, potential respondents were given inaccurate instructions regarding filing opposition.

39. 04-28268-A-7 TRACY/ROBERT HAGEMAN

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
9-16-04 [15]

Tentative Ruling: The petition will be dismissed.

The court granted the debtor permission to pay the filing fee in installments. The installment in the amount of $52 due on September 13 was not paid.

40. 96-29468-A-7 DANIEL/LINDY MARTIN
VS. CREDIT BUREAU OF NAPA COUNTY, INC.

HEARING - MOTION TO AVOID JUDICIAL LIEN ETC
8-24-04 [19]

Tentative Ruling: The motion will be denied.

The debtors filed a petition for relief under chapter 7 on August 1, 1996. J. Calvin Hermansen was appointed as the chapter 7 trustee. The debtors received their discharge on December 30, 1996.

On August 24, 2004, the debtors reopened their case in order to file a motion to avoid a judicial lien.

A judgment was entered against the debtors in favor of the Credit Bureau of Napa County, Inc. dba Chase Receivables for the sum of $5,224.37. The Abstract of Judgment was recorded with the Solano County Recorder's Office on December 19, 1995. That lien attached to the debtors' real property located at 2549 Baltic Drive, in Fairfield, California.

The debtors move to avoid the lien on the real property pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to 11 U.S.C. § 522(f)(1)(A), the debtors may avoid the fixing of a lien to the extent the lien impairs an exemption. The debtors argue that the judicial lien impairs exemptions that they are entitled to under 11 U.S.C. § 522(b). However, the debtors have failed to provide evidence of the amount of their exemption, the value of the subject property on the date of their petition, and the total amount of liens and mortgages against the property on that same date. Without this evidence the court cannot apply the mandatory formula set out in 11 U.S.C. § 522(f)(2). Therefore, the motion is denied without prejudice.

41. 04-26972-A-7 MARIO/BERTHA GARCIA
WJO #1
BOBBY VARGAS, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
9-2-04 [11]

Tentative Ruling: The debtors filed a petition for relief under chapter 7 on July 8, 2004. Hank Spacone was appointed as the chapter 7 trustee.

The movant, Bobby Vargas, seeks relief from the automatic stay in order to continue prosecution of a personal injury action pending in state court and to satisfy any judgment or settlement from the debtors' insurance policies.

The debtors' insurance policies are not an asset of the estate, at least in the sense that it can be administered by the trustee. Excluding the insurance, there are no assets of the estate. Given that the trustee cannot collect the insurance, his only interest would be in using it to satisfy or reduce claims covered by the insurance in order that other "noncovered" claims could realize a greater return on other assets of the estate. However, there are no other assets as indicated by the trustee's "no asset" report.

A bankruptcy discharge will exonerate only the debtors' personal liability. 11 U.S.C. § 524(a)(1). Consequently, neither the discharge, nor the discharge injunction, will affect the ability of the movant to proceed against the debtors' insurance. Section 524(a)(2) provides that the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." (Emphasis added.) Proceeding against the debtors' insurance coverage is not an act to collect a debt as the personal liability of the debtor. Green v. Welsh, 956 F.2d 30 (2d Cir. 1992); Patronite v. Beeney (In re Beeney), 142 B.R. 360 (B.A.P. 9th Cir. 1992); First Fidelity Bank v. McAteer, 985 F.2d 114 (3rd Cir. 1993).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1). Any judgment may not be enforced as a personal liability of the debtors. It may be satisfied solely from available insurance coverages, if any.

42. 04-28372-A-7 MATTHEW WELDING

HEARING - ORDER TO SHOW CAUSE RE DISMISSAL OF CASE OR IMPOSITION OF SANCTIONS
9-10-04 [22]

Tentative Ruling: The petition will be dismissed.

A review of the court's file indicates that the debtor has failed to file a schedules and statements within the time required by Fed.R.Bankr.P. 1007(c) and 11 U.S.C. § 521(1).

Further, the debtor failed to appear at the first meeting of creditors as ordered by the court and as required by 11 U.S.C. § 343.

From the failure of the debtor to appear at the first meeting as ordered, and to file documents as required by the rules and the code, the court infers that the debtor has willfully failed to appear before the court in the proper prosecution of the debtor's bankruptcy case. Accordingly, the dismissal of the case is pursuant to section 109(g)(1) of the Bankruptcy Code. The debtor will be barred from filing another petition for the next 180 days.

43. 04-28372-A-7 MATTHEW WELDING
MPD #1
OCWEN FEDERAL BANK, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
9-2-04 [6]

Tentative Ruling: The motion will be dismissed as moot. The petition has been ordered dismissed. Upon entry of the dismissal order, the automatic stay will expire as a matter of law. See 11 U.S.C. § 362(c).

44. 04-28372-A-7 MATTHEW WELDING
MPT #1
BILL AND JIM COOK, INC., VS.

CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC
9-2-04 [13]

Tentative Ruling: The motion will be dismissed as moot. The petition has been ordered dismissed. Upon entry of the dismissal order, the automatic stay will expire as a matter of law. See 11 U.S.C. § 362(c).

45. 02-20785-A-7 PAUL FARRIS
WGC #3

HEARING - MOTION TO APPROVE COMPROMISE WITH NICHOEL FARRIS (ADV. 03-2438)
9-15-04 [100]

Final Ruling: The motion will be dismissed without prejudice.

Fed.R.Bankr.P. 2002(a)(3) requires a minimum of 20 days' notice of hearing on a motion to approve a compromise. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(3) requires a minimum of 20 days of notice of the deadline for objecting to confirmation, because the court has not shortened the amount of notice, and because the debtor gave only 19 days' notice, there has been insufficient notice given of this hearing.

46. 02-20785-A-7 PAUL FARRIS
WGC #4

HEARING - MOTION TO APPROVE SALE OF ESTATE'S INTEREST IN 1838 FEATHER RIVER BOULEVARD
9-15-04 [97]

Final Ruling: The motion will be dismissed without prejudice.

Fed.R.Bankr.P. 2002(a)(2) requires a minimum of 20 days' notice of hearing on a motion to sell property of the estate. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides that 14 days' notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(2) requires a minimum of 20 days of notice of the deadline for objecting to confirmation, because the court has not shortened the amount of notice, and because the debtor gave only 19 days' notice, there has been insufficient notice given of this hearing.

47. 03-31489-A-7 STEVEN GRIMM
RWBR #1

HEARING - JOINT MOTION REQUESTING COURT TO INSTRUCT THE TRUSTEE TO IMMEDIATELY PAY PRIORITY CLAIMANT, THE INTERNAL REVENUE SERVICE
9-17-04 [125]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditors, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

48. 04-28889-A-7 MARIA RILEY
SW #1
GMAC, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-04 [6]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

49. 04-27290-A-13L JACOB MESIKA
CWC #1
MAURICE/TRUDY KALISKY, VS.

HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
9-20-04 [21]

Tentative Ruling: The motion will be granted in part.

The defendant/debtor filed a petition for relief under chapter 13 on July 16, 2004. It is pending. No plan has been confirmed.

At the time the above chapter 13 petition was filed, an action brought two years earlier by the plaintiffs was pending in state court. The state court action involves allegations of breach of contract, fraud, and infliction of emotion distress arising from the sale and transfer of their business, the Upper Crust Bakery, to the defendant/debtor. The plaintiffs also named the defendant/debtor's mother and sister in their first amended complaint. The plaintiffs recently amended their complaint to add as a defendant the law firm involved in the sale of the business.

The plaintiffs filed an earlier chapter 13 petition, Case No. 02-23078. Their chapter 13 petition remains pending.

The state court proceeding was removed to the bankruptcy court by the law firm on July 16, 2004.

The plaintiffs move for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) in order to liquidate their monetary claims against the defendant/debtor

and to obtain declaratory and injunctive relief as to a leasehold interest claimed by the defendant/debtor as an asset of his bankruptcy estate. The plaintiffs argue that cause exists to grant the motion because the bankruptcy was filed in bad faith for the purpose of avoiding and/or delaying resolution of various issues in favor of the plaintiffs.

In addition, the plaintiffs seek damages pursuant to 11 U.S.C. § 362(h). They contend that the debtor/defendant and other defendants filed a cross-complaint against the plaintiffs in violation of the automatic stay. The plaintiffs request damages, in the form of attorney's fees incurred to answer the cross-complaint, in the amount of $525.

The defendant/debtor opposes the motion, arguing that the plaintiffs are abusing the bankruptcy system. The defendant/debtor requests relief from the automatic stay in order to liquidate his claims against the plaintiffs, to the extent such relief is granted to the plaintiffs.

The defendant/law firm also opposes the motion, asserting that damages are not appropriate in this case. The defendant/law firm contends that the defendants' cross-complaint is a compulsory cross-complaint pursuant to Cal. Civ. Proc. Code § 426.30. The causes of action alleged in the cross-complaints relate to the causes of action alleged by the plaintiffs. Therefore, if they did not assert such causes of action in a cross-complaint, the defendants would effectively waive these causes of action.

The plaintiffs' motion for relief from the automatic stay will be granted for the limited purpose of liquidating claims against the defendant/debtor.

All parties would be well served if they dialed down the hyperbole. This motion should be granted, not because anyone is abusing the bankruptcy code, but because the parties are asserting claims based on state law that must be resolved in order for them to successfully complete their chapter 13 cases.

While the plaintiffs are correct that the filing of the cross-complaint by the defendant/debtor was a technical violation of the automatic stay, it was one provoked by the filing of the complaint. Further, it is clear that if the plaintiff wishes to prosecute the complaint, the entire controversy must be resolved. Therefore, the solution is not to sanction the defendant/debtor for the filing of the cross-complaint but to annul the automatic stay in order to ratify its filing.

The bankruptcy court has "wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." Schwartz v. United States (In re Schwartz), 954 F.2d 569, 572 (9th Cir. 1992). Annulment of the automatic stay can validate an otherwise invalid transaction. See Algeran, Inc. v. Advance Ross Corp. (In re Algeran), 759 F.2d 1421, 1425 (9th Cir. 1992).

The standard for annulling the automatic stay has been phrased differently by various courts. One has held that cause to annul the stay may exist where "the stay harms the creditor and lifting the stay will not unjustly harm the debtor or other creditors." In re Murray, 193 B.R. 20, 22 (Bankr. E.D. Cal. 1996) (quotation marks and citation omitted). Another has indicated that the court should focus on whether the creditor was aware of the petition, whether the debtor engaged in unreasonable or inequitable conduct, and whether prejudice would result to the creditor. See National Environmental Waste Corp. v. City of Riverside (In re National Environmental Waste Corp.), 129 F.3d 107, 108 (9th

Cir. 1997). Yet another court examined such factors as whether the automatic stay would have been modified to permit the litigation to proceed had such relief been seasonably sought, whether the debtor is and was represented by legal counsel in the nonbankruptcy proceeding, and whether or not annulling the stay would lead to nonsensical results. Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 109 (9th Cir. 1995).

Distillation of this precedent leads the court to conclude that exercising its discretion to annul the automatic stay must be guided by the particular circumstances of these cases. No one fact or circumstance determines the result. See In re National Environmental Waste Corp., 129 F.3d at 108; Palm v. Klapperman (In re Cady), 266 B.R. 172, 179 (B.A.P. 9th Cir. 2001); Aheong v. Mellon Mortgage Company (In re Aheong), 276 B.R. 233, 250 (B.A.P. 9th Cir. 2001).

The circumstances of these cases overwhelmingly counsel in favor of annulling the automatic stay created by the filing of the plaintiffs' petition so as to ratify the filing of the cross-complaint by the defendant/debtor.

First, the controversy has been pending in state court and implicates only state law. Judicial economy dictated, and continues to dictate, that the state court litigation be permitted to come to a final resolution. See, e.g., Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble), 776 F.2d 803, 806-07 (9th Cir. 1985) (holding that judicial economy may be cause warranting modification of the stay to permit a nonbankruptcy court to resolve litigation involving a debtor); Piombo Corp. v. Castlerock Properties (In re Castlerock Properties), 781 F.2d 159, 163 (9th Cir. 1986) (not an abuse of discretion to modify the automatic stay to permit creditor's claim to be determined in nonbankruptcy court along with the debtor's related counterclaim).

Second, if the automatic stay is not annulled, time, effort, and money has been wasted all to no end. Both the plaintiffs/debtors and the defendant/debtor must resolve their dispute in order to consummate their plans. If the court deems the cross-complaint to be void, it will simply have to be refiled and answered again.

Third, if at the beginning of each of the chapter 13 cases, any party in interest had sought permission to enter the judgment and proceed in state court, that motion would have been granted.

The defendant/debtor must liquidate his claim (as contained in the cross-complaint) against the plaintiffs. The value of the cross-complaint impacts the confirmability of his plan. See 11 U.S.C. § 1325(a)(4). If his claim has significant value, and if the debtor is unable to pay that value to creditors from his disposable income, his plan may have to provide for the payment of some or all of the recovery to creditors. See 11 U.S.C. § 1322(b)(8). Finally, if the defendant/debtor is required to pay a dividend to unsecured creditors, the amount of these claims must be ascertained.

Likewise, the plaintiffs must go forward with the litigation. If they owe money to the defendant/debtor, the amount owed must be determined. The plaintiffs' plan provides for at least a 10% dividend to holders of unsecured claims. If the plaintiffs are owed money by the defendant/debtor, the obligation must be reduced to judgment and collected then paid to the plaintiffs' creditors. Their modified plan requires the distribution of any recovery to creditors.

Fourth, the court discerns no prejudice or unfairness to the plaintiffs if the automatic stay is annulled. They were and are represented by legal counsel in state court. If the plaintiffs wish to litigate, then all related claims will be litigated.

The defendant/law firm knows very well that the court will not address the merits of the underlying litigation while entertaining a motion for relief from the automatic stay. In the words of the Ninth Circuit: "Stay litigation is limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization . . . The validity of the claim or contract underlying the claim is not litigated during the hearing. . . . Thus, the state law governing contractual relationships is not considered in stay litigation." Johnson v. Righetti (In re Johnson), 756 F.2d 738, 740 (9th Cir. 1985), *cert. denied*, 474 U.S. 828 (1985). In other words, if some purpose would be served by litigating the rights of the parties, that must be done apart from the motion for relief from the automatic stay.

The defendant/law firm also has no standing to oppose the modification of the automatic stay protecting either the plaintiff or the defendant/debtor. It protects only the debtors and only they may oppose its modification.

Therefore, the need to liquidate the mutual claims between the parties is cause to modify the stay. See 11 U.S.C. § 362(d)(1). No judgment or settlement may be enforced other than by filing or amending a proof of claim absent a further order from this court in the relevant bankruptcy case.

As to the request for damages pursuant to 11 U.S.C. § 362(h), the motion will be denied.

50. 04-27290-A-13L JACOB MESIKA
04-2261 TJR #1
MAURICE/TRUDY KALISKY, VS.
JACOB MESIKA

HEARING - MOTION FOR RELIEF FROM THE AUTOMATIC STAY ETC
7-21-04 [9]

Tentative Ruling: The court first notes that this motion by Mr. Mesika seeks relief from the automatic stay created by the filing of the Kaliskys' chapter 13 petition, case no. 02-23078. Thus, the motion should not have been filed in the adversary proceeding and it should have been filed in the Kaliskys' chapter 13 case, not Mesika's case.

Overlooking these deficiencies, the motion is well taken. The parties are asserting mutual claims against one another. Nondebtor parties are present. A jury trial has been demanded and the Kaliskys' objection precludes the bankruptcy court from handling such a jury trial. See 28 U.S.C. § 158(e). The claims are based entirely on state law.

Both the Kaliskys and the Mesika must liquidate their mutual claims in order to proceed with their chapter 13 plans.

Mesika must liquidate his claim, as contained in the cross-complaint, against the Kaliskys. The value of the cross-complaint impacts the confirmability of his plan. See 11 U.S.C. § 1325(a)(4). If his claim has significant value, and if the debtor is unable to pay that value to creditors from his disposable income, his plan may have to provide for the payment of some or all of the recovery to creditors. See 11 U.S.C. § 1322(b)(8). Finally, if Mesika is required to pay a dividend to unsecured creditors, the amount of these claims,

including the claim of the Kaliskys, must be ascertained.

Likewise, the Kaliskys must go forward with the litigation. If they owe money to Mesika, the amount owed must be determined. Their plan provides for at least a 10% dividend to holders of unsecured claims. If the Kaliskys are owed money by Mesika, his obligation must be reduced to judgment and collected then paid to the Kaliskys' creditors. Their modified plan requires the distribution of any recovery to creditors.

Thus, there is cause to go forward with the litigation. See 11 U.S.C. § 362(d)(1). No judgment or settlement may be enforced other than by filing or amending a proof of claim absent a further order from this court in the relevant bankruptcy case.

51. 04-27290-A-13L JACOB MESIKA
04-2261 TJR #1
MAURICE/TRUDY KALISKY, VS.
JACOB MESIKA

CONT. HEARING - MOTION TO DISMISS
7-21-04 [9]

Tentative Ruling: Because the court intends to abstain and remand the proceeding to state court, no action will be taken on the motion to dismiss.

52. 04-27290-A-13L JACOB MESIKA
04-2261 TJR #1
MAURICE/TRUDY KALISKY, VS.
JACOB MESIKA

CONT. HEARING - COUNTER-MOTION FOR REMAND TO STATE COURT
8-10-04 [16]

Tentative Ruling: The counter-motion will be granted.

The defendant/debtor filed a petition for relief under chapter 13 on July 16, 2004. It is pending.

At the time the above chapter 13 petition was filed, an action brought two years earlier by the plaintiffs was pending in state court. The state court action involves allegations of breach of contract, fraud, and infliction of emotional distress arising from the sale and transfer of their business, the Upper Crust Bakery, to the defendant/debtor. The plaintiffs also named the defendant/debtor's mother and sister in their first amended complaint.

The plaintiffs filed an earlier chapter 13 petition, Case No. 02-23078. Their chapter 13 petition remains pending.

The plaintiffs recently amended their complaint to add as a defendant the law firm involved in the sale of the business. The law firm previously represented the plaintiffs in two 2001 unlawful detainer actions involving the business premises prior to the sale of the business to the defendant/debtor. After the resolution of these two unlawful detainer actions, the plaintiffs and the defendant/debtor reached agreement regarding the sale of the business. According to the law firm's motion to dismiss, it "attempted" to assist the parties with the purchase and sale, but then withdrew, apparently realizing it would have a conflict of interest if it represented both buyer and seller.

Nonetheless, in October and November 2001, after advising the plaintiffs of its conflict, and after acquiring, according to the complaint, confidential information from the plaintiffs, the law firm represented the plaintiffs and the defendant/debtor in a third unlawful detainer proceeding.

The complaint alleges that the law firm's representation in October and November 2001 is the basis for the various claims against the law firm.

The state court proceeding was removed to the bankruptcy court by the law firm on July 16, 2004. On July 21, 2004, the law firm now moves to dismiss the adversary proceeding based on grounds that some of the claims against it are barred by the statute of limitations and that the plaintiffs have failed to adequately plead the fraud claim.

The plaintiffs responded by filing this counter-motion to remand the proceeding to state court. The plaintiffs argue that remand is appropriate because of the advanced procedural posture of the state action, the fact that the debtor is only one of four named defendants in the action, and that there is no compelling reason to litigate the matter in the bankruptcy court. The defendant/debtor and the law firm oppose a remand, arguing that the state court action was not at a procedurally advanced stage since very little discovery had been conducted.

The court will remand the action to state court pursuant to 28 U.S.C. § 1452(b) and it will abstain pursuant to 28 U.S.C. § 1334(c)(1).

The Ninth Circuit has promulgated twelve non-exclusive factors for a court to consider in deciding whether to abstain under section 1334 (c)(1). The court's discretion to remand pursuant to section 1452(b) is influenced by nearly identical factors. Western Helicopters, Inc. V. Miller Aviation, Inc., 97 B.R. 1, 6 (E.D. Cal. 1988); In re Tucson Estates, Inc., 912 F.2d 1161, 1167 (9th Cir. 1990).

The factors to be applied are: "(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy, (7) the substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties." Eastport Association v. City of Los Angeles (In re Eastport Association), 935 F.2d 1071, 1075-76 (9th Cir. 1991).

Application of the above factors to the present proceeding favors remand and abstention. Here, the primary issues and claims, such as fraud, breach of contract, and infliction of emotional distress, are based entirely on state law. There are no significant issues based on bankruptcy law or any other federal law.

This proceeding, based primarily on a claim of fraud, does not arise in or under the bankruptcy code. Thus, the proceeding is not a "core" proceeding, as defined under 28 U.S.C. § 157. Consequently, the bankruptcy court could not enter a final order absent the consent of the parties. See 28 U.S.C. § 157(c)(1).

Because the commencement of the bankruptcy case occurred while the state action was pending, the likelihood of forum shopping by the defendant is highly probable.

A trial of this proceeding would unduly burden the court's docket. The court is unable to give any more than two consecutive days for any trial. The likelihood of completing a trial in two days in this proceeding is nil.

This is especially true given the jury trial demand. Further, the bankruptcy court cannot handle a jury trial absent the consent of all parties. Given that the plaintiffs do not want to be in bankruptcy court, the court suspects that they will not consent. In the absence of everyone's consent, any jury trial would have to be in district court. To get into district court, a motion to withdraw the reference is necessary. See 28 U.S.C. § 157(d). If that motion was granted, the district court would likely abstain sua sponte pursuant to 28 U.S.C. § 1334(c)(1). Unlike 28 U.S.C. § 1334(c)(2), section 1334(c)(1) does not require the filing of a motion requesting abstention.

Finally, there are three non-debtor parties also present in the proceeding.

The proceeding here is best handled by the state court. The fact that the state court has been handling the case since 2002 reinforces this conclusion. The state court is already thoroughly familiar with the proceeding and it is best equipped to deal with it.

Accordingly, the counter-motion will be granted.

53. 04-27490-A-7 CARLO HARRINGTON — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
BEN OGBEBOR, VS. — 9-20-04 [13]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

54. 03-30492-A-7 GREGORY/MARJORIE MCCOMB — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
KCC #1
FIRESIDE BANK, VS. — 8-26-04 [19]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The debtor filed a petition for relief under chapter 7 on September 23, 2003. Hank Spacone was appointed as the chapter 7 trustee.

The movant, Fireside Bank fka Fireside Thrift Company, seeks relief from the

automatic stay with respect to a 1996 Mazda B2300 SE CAB. The movant alleges that cause exists to grant the motion because its interest in the vehicle is not adequately protected and there is no equity in the subject vehicle.

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The subject property has a value of $5,315 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of $11,432.51, including costs. There is no equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the subject property for the benefit of creditors.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

55. 04-25792-A-7 LUKE/VIRGINIA KLEIN — HEARING - MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT OF TRUSTEE'S CLAIM FOR DEBTORS INTEREST IN REAL PROPERTY CO-OWNED WITH HIS SISTER
MPD #1 — 9-9-04 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

56. 04-21796-A-7 JOHN/VERONICA WOGEC — HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY
WGM #1 — 9-17-04 [25]
LONG BEACH MORTGAGE COMPANY, VS.

Tentative Ruling: The debtors filed a voluntary petition for relief under chapter 7 on February 24, 2004. John R. Roberts was appointed as the chapter 7 trustee. The debtors received their discharge on May 27, 2004.

On June 16, 2003, the debtors executed a first deed of trust in favor of the movant, Long Beach Mortgage Co., to secure an indebtedness of $216,451. The deed of trust encumbers property located at 5315 Dasco Way, in Sacramento, California.

The debtors have defaulted under the note, owing all payments due beginning August 1, 2004. The total unpaid principal on the note is $214,857.14 plus interest, late charges, and attorney's and foreclosure fees. The movant estimates the total unpaid balance to be approximately $219,684.07. The property has been valued at $340,000 in the debtors' Schedule A.

The property is also encumbered by a junior deed of trust securing a claim of approximately $92,000.

The debtors have claimed an exemption of $32,030 without objection. The debtors have been discharged. As to the debtors and their interest in the property, the automatic stay has expired.

Therefore, in order for the estate to profit from a sale of the subject property, the property must be worth more than $343,714 plus whatever additional amount is necessary to cover costs of sale.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(2) based on the lack of equity in the subject property.

The chapter 7 trustee opposes the motion, arguing that there is equity in the property. In addition, the trustee contends that the second deed of trust, in the amount of $92,000, is cross-collateralized by the debtors' business, which has been sold. The trustee is negotiating to have the second deed of trust paid off by the buyer of the business. He asserts that this course of action would produce even more equity in the subject property for the benefit of creditors.

As to the estate, relief from the stay is not appropriate. First, even under the movant's version of the facts, there is equity in the property. Second, the movant is adequately protected by a substantial equity cushion of over $100,000. Moreover, there is evidence in the record that the trustee can administer the subject property for the benefit of creditors. Accordingly, the motion is denied.

The parties are to bear their own fees and costs.